



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 24, 2023

IN THE MATTER OF:

Appeal Board No. 628672

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 16, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 16, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

By decision filed January 20, 2023 (Appeal Board No. 626194), the Board rescinded the decision of the Administrative Law Judge filed September 26, 2022 and remanded the case to the Hearing Section for a hearing and a decision on the remanded issues. The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed March 24, 2023 (), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the employer has indicated that the employer did not proceed at the remand hearing because its representative was unavailable due to being in another hearing. The Board has determined to provide the employer another opportunity to submit additional testimony and other evidence on the issues. Specifically, the employer should produce a witness with knowledge of the reason(s) that the claimant's religious exemption request was denied in

light of her prior exemptions from mandated vaccinations.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER